

ORDINANCE NO. 1399

AN ORDINANCE AMENDING CITY OF VERMILLION CODE OF ORDINANCES TITLE III: ADMINISTRATION, CHAPTER 32: CITY ORGANIZATIONS.

BE IT ORDAINED by the Governing Body of the City of Vermillion that South Dakota Title III: Administration Chapter 32; City Organizations be amended as follows:

§ 32.41 DEFINITIONS.

COMPLAINANT. A person for whom, or on whose behalf, a verified complaint alleging unlawful discrimination has been submitted to the Commission.

DISABILITY. A physical or mental impairment of a person resulting from disease, injury, congenital condition of birth or functional disorder which substantially limits one or more of the person's major life functions; a record of having an impairment; or being regarded as having an impairment which:

(A) For purposes of § 32.49 (A) through (C), inclusive, is unrelated to an individual's ability to perform the major duties of a particular job or position, or is unrelated to an individual's qualifications for employment or promotion;

(B) For purposes of § 32.49 (D) and (H) is unrelated to an individual's ability to acquire, rent, or maintain property; and

(C) For purposes of § 32.49 (E) and (F) is unrelated to an individual's ability to utilize and benefit from opportunities, programs, and facilities of accommodations and services.

This term does not include current illegal use of or addiction to marijuana as defined in SDCL subdivision 22-42-1(7) or a controlled substance as defined in SDCL subdivision 22-42-1(1).

DISCRIMINATORY OR UNFAIR PRACTICE. Any unlawful act or attempted unlawful act which, because of sex, race, color, creed, religion, ancestry, disability, national origin or familial status, results in the unequal treatment or separation or segregation of any person, or denies, prevents, limits or otherwise adversely affects, or if accomplished would deny, prevent, limit or otherwise adversely affect the benefit or enjoyment by any person of employment, a labor union membership, housing accommodations, property rights, education, public accommodations, and public services. **DISCRIMINATORY OR UNFAIR PRACTICE** as defined above is unlawful and is a violation of this subchapter. In addition, it is the policy of the City that discriminatory practices based on marital status, military or veteran status, gender identity, or sexual orientation, while not prohibited by state law, constitute unfair practices which adversely affect people. The Commission, through public information promotion and as permitted by § 32.50, will seek to improve human relations and eliminate such unfair practices. Accordingly, discriminatory practices based on marital status, military or veteran status, gender identity, or sexual orientation will not be investigated or be the subject of complaint resolution procedure until permitted by state law. However, such acts may be brought to the attention of the

Commission by a complainant in the form of a verified complaint, which is consistent with the provisions of § 32.51 for record keeping and referral purposes.

FILE. A verified complaint is officially **FILED** with the Commission when the Commission has completed a preliminary review of said verified complaint and determined that an investigation of discriminatory or unfair practice shall commence in accordance with SDCL 20-12-4.

PARTY. The complainant or the respondent.

REAL ESTATE BROKER OR REAL ESTATE SALESPERSON. A real estate broker and a real estate salesperson as defined by SDCL 36-21A-6 or as licensed pursuant to SDCL 36-21A-47.

RESPONDENT. A person against whom a verified complaint alleging unlawful discrimination has been filed.

§ 32.47 QUORUM/RULES AND REGULATIONS.

(A) A majority of the voting members of the Commission then holding a current appointment shall constitute a quorum for the transaction of all official business.

(B) Any decisions made by the Commission regarding actions to be taken on any official business shall be determined by a majority of a quorum.

§ 32.50 SUBSTANTIVE AND PROCEDURAL AUTHORITY AND DUTIES.

The authority and duties of the Commission shall be to:

(O) Hear and inquire into verified complaints alleging discrimination regarding the City of Vermillion in accordance with the procedures set forth in this subchapter. Pursuant to state law, there is presently no legal authority to investigate verified complaints alleging discrimination because of marital status, military or veteran status, gender identity, or sexual orientation. Accordingly, until state law authorizes municipalities, pursuant to SDCL 20-12-4, to investigate discriminatory practices based on marital status, military or veteran status, gender identity, or sexual orientation, these discriminating practices cannot be investigated by the Commission. However, such acts may be brought to the attention of the Commission by a complainant in the form of a verified complaint, which is not inconsistent with the provisions outlined in § 32.51, for record and referral purposes. The Commission shall have no regulatory enforcement powers which are inconsistent with the provisions of this subchapter.

§ 32.51 SUBMITTING A VERIFIED COMPLAINT.

(A) Any person claiming to be aggrieved by a discriminatory practice may submit to the Commission a verified complaint which shall state the name and address of each person complained against (respondent[s]) and shall set forth the pertinent facts as known to the complainant.

(B) Any verified complaint shall be submitted to the Commission by means of completing and submitting a verified complaint form made available to the public by the City.

(C) Any verified complaint submitted with the Commission under this subchapter shall be submitted within one hundred and eighty (180) calendar days after the last occurrence of an alleged discriminatory or unfair practice.

§ 32.52 DISMISSAL OF COMPLAINT PRIOR TO FILING.

The Commission may order the dismissal of any verified complaint prior to investigation if the Commission determines in good faith that:

(A) The unlawful act or practice complained of occurred outside city limits;

(B) The verified complaint has been abandoned or withdrawn by the complainant;

(C) The City is not authorized by state law to investigate the verified complaint;

(D) The complainant fails to state a claim within the verified complaint form upon which relief can be granted;

(E) The unlawful act or practice complained of has been satisfactorily eliminated and that further proceedings are unnecessary; or

(F) The allegations complained of are being processed or have been addressed to the satisfaction of the Commission by another agency or by a court of competent jurisdiction.

§ 32.53 COMMISSION SUBCOMMITTEE PRELIMINARY REVIEW.

(A) Promptly upon the receipt of any verified complaint, either the Commission Chairperson or Vice Chairperson shall meet with two additional Commission Members within ten (10) calendar days to review and recommend whether or not said verified complaint shall be dismissed as prescribed in § 32.52. These three Commission Members shall be referred to as the Commission Subcommittee for said verified complaint.

(B) Promptly after the review of any verified complaint by a Commission Subcommittee, the Commission Subcommittee shall submit a report to the Commission summarizing their recommendation and reasoning therefor.

(C) The Commission shall meet to review any Commission Subcommittee report within five (5) calendar days of the completion of said report.

§ 32.54 SERVICE OF RESPONDENT AND VERIFIED ANSWER.

(A) Upon review of any Commission Subcommittee report, the Commission shall promptly either:

(1) Dismiss the verified complaint as prescribed in § 32.52 and serve a notice of complaint dismissal, by personal service or registered or certified mail, unto the complainant; or

(2) File the verified complaint and serve a notice of complaint investigation, by personal service or registered or certified mail, unto the complainant and a notice of complaint and investigation and verified response form, by personal service or registered or certified mail, unto the respondent.

(B) Within fifteen (15) calendar days after the service of a notice of complaint and investigation, or within any period of extension granted by the Commission Chairperson, the respondent may submit to the Commission a completed verified response form.

§ 32.55 COMPLAINT INVESTIGATION; DETERMINATION OF PROBABLE CAUSE AND REFERRAL.

(A) Except to the Commission and either party involved in a verified complaint, any and all documents submitted to or created by the Commission, or copies thereof, regarding an allegation of discrimination asserted in said verified complaint shall remain confidential documents until such time as the matter is transferred to either a court of competent jurisdiction or to the State Commission of Human Rights.

(B) Within five (5) calendar days following the fifteen-day wait period, or following any period of extension granted by the Commission Chairperson to allow for a respondent to submit a completed verified response form, the Commission shall meet and proceed in good faith to investigate a verified complaint and verified answer to determine whether there is probable cause to support any allegations of discriminatory or unfair practice.

(C) If the respondent does not wish to submit a verified response form, probable cause shall be determined with regard to the information available to the Commission.

(D) The Commission may request the complainant and/or the respondent to appear before the Commission for a pre-determination conference if deemed necessary by the Commission.

(E) Upon the completion of any investigation of discriminatory or unfair practice by the Commission, the Commission shall promptly serve a notice of determination of probable cause, by personal service or registered or certified mail, unto both parties. Additionally, referrals to

appropriate state regulatory bodies and other relevant resources that may help to remedy the matter may be sent along with the notice of determination of probable cause.

(F) The Commission shall keep for record any and all documents, or copies thereof, regarding an allegation of discrimination asserted in a verified complaint form submitted to the Commission. Both parties shall be permitted to inspect any documents not prepared by the Commission in the possession of the Commission that are relevant to the determination of probable cause upon request.

§ 32.56 CONSULTING WITH THE CITY ATTORNEY.

(C) The Commission shall only request to employ the consultation services of the City Attorney when the Commission members believe that it is necessary for the just and competent effectuation of their duty to determine probable cause regarding a specified matter, or specified matters, within a verified complaint that has been submitted to the Commission.

§ 32.57 TRANSFER AFTER PROBABLE CAUSE DETERMINATION.

If the matter before the Commission is not resolved informally, either party must elect to assert their claims in circuit court in order to have them determined. If such election does not occur within twenty (20) calendar days following notice of probable cause determination, the matter shall be dismissed by the Commission.

§ 32.58 TRANSFER OF COMPLAINTS TO STATE COMMISSION.

Upon the filing of any verified complaint, the parties to the verified complaint shall be notified that any party thereto may, within fifteen (15) calendar days of the date of receipt of the notice of the proceeding, demand as a matter of right that the matter be transferred to the State Commission of Human Rights, which shall process the verified complaint under the provisions of SDCL Ch. 20-13. Immediately upon receipt of notice of a party's demand to transfer the verified complaint under this provision, the Commission shall forward the verified complaint to the State Division of Human Rights and shall thereafter have no further jurisdiction with regard to the verified complaint.

Statutory reference:

Similar provision, see SDCL § 20-12-9

§ 32.59 RIGHTS OF PARTIES NOT ABRIDGED.

§ 32.60 APPLICATION TO OTHER DISABILITIES.

§ 32.61 SEVERABILITY CLAUSE.

Dated at Vermillion, South Dakota this 18th day of March, 2019.

THE GOVERNING BODY OF THE CITY
OF VERMILLION, SOUTH DAKOTA

BY John E. Powell
John E. (Jack) Powell, Mayor

ATTEST:

BY Michael D Carlson
Michael D Carlson, Finance Officer

First Reading: March 4, 2019
Second Reading: March 18, 2019
Published: March 29, 2019
Effective: April 18, 2019

